

Remarks

In the Office Action, the Examiner noted that claims 1, 3, 4, 6-9, 11-23, 25-33 and 35 are pending in the application; claims 1, 3, 4, 6-9, 11-23, 25-33 and 35 are rejected; and that claim 6 is objected to. By this amendment, claims 1, 6, 30 and 32 have been amended, and claim 4 has been cancelled without prejudice or disclaimer of the subject matter contained therein. Thus, claims 1, 3, 6-9, 11-23, 25-33 and 35 are pending in the application. No new subject matter has been inserted through these amendments. Specifically, claim 1 was amended to incorporate the limitations (in part) of canceled claim 4. Claims 6 and 30 were amended to change the dependence from canceled claim 4 to claim 1 and claim 3 respectively. Claim 32 was amended to cancel the recitation of a specific cationic surfactant which is no longer recited in claim 1. Thus it is respectfully submitted that all of the amendments are fully supported by the specification. The Examiner's rejections are traversed below.

Rejection Under 35 U.S.C. § 103(a)

Claims 1, 3, 4, 7-9, 11-23, 25-33 and 35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Talton (US 6,406,745).

In particular, the Examiner alleges that "Talton discloses composition comprising coated core comprising particles, phosphatidylcholine zwitterion, morphine, EUDRAGIT, HPMC (abstract, column 12, lines 12-22; column 20, line 13; columns 21 and 22; Examples 3, 4 and 9). However, Applicants respectfully disagree with this analysis because the Examiner has selectively picked various passages of Talton in arriving at this rejection. To the contrary, Applicants respectfully submit that Talton neither teaches nor suggests so as to motivate one of skilled in the art of medicinal chemistry to arrive at the present invention at the time Applicants made this invention. However, in order to advance the prosecution of this case, claim 4 has been canceled without prejudice and the specific zwitterionic surfactants that were recited in claim 4, excluding phosphatidylcholines, have been incorporated into independent claim 1, thus rendering this rejection moot. Furthermore, since the Examiner is objecting to claim 6 as being

allowable but depends on rejected claim 1, it is submitted that claim 1, as amended, now satisfies the requirements of 35 U.S.C. 103(a), and therefore, is in condition for allowance.

More specifically, objected claim 6 recites a specific zwitterionic surfactant to be cocamidopropylbetaine. Whereas, claim 4 recited a more generic forms of these types zwitterionic surfactants, which are “N-alkylbetaines, C-alkylbetaines, N-alkylamido-betaines, N-alkylglycines and lecithins.” As noted, while objecting to claim 6 as being dependent on rejected baser claim, the Examiner has already acknowledged that cocamidopropylbetaine is void of any prior art. Therefore, it is respectfully submitted all of the above noted zwitterionic surfactants are generic forms of cocamidopropylbetaine, and are therefore are also void of any prior art. In view of the foregoing, withdrawal of rejection as to claims 1, 3, 4, 7-9, 11-23, 25-33 and 35 is respectfully requested.

Claim Objection

Claim 6 stands objected as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of limitations of the base claim and any intervening claims.

As discussed above, claim 1, as amended, essentially incorporates a generic scope of claim 6, and therefore, it is submitted that claim 1, as amended, is in condition for allowance. Therefore, it is submitted that objection as to claim 6 is rendered moot. Accordingly, withdrawal of objection as to claim 6 is respectfully requested.

In addition, the Examiner has noted that claim 19 does not have a proper status identifier because claim 35 is a new claim. The undersigned in his response of January 3, 2006 inadvertently provided a wrong status identifier of “New” for claim 35, which should have been “original.” Please note that claim 35 was presented in the response of May 24, 2005. Accordingly, in this amendment a proper status identifier of “original” has been provided for claim 35, thus removing any confusion this may have caused. Additionally, claims 23, 25-29, 31 and 33 were never amended and therefore, previously

provided status identifier, "Previously presented" has been changed correctly to "Original."

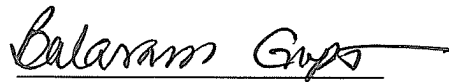
Conclusions

In view of the above Remarks, it is respectfully submitted that claims 1, 3, 6-9, 11-23, 25-33 and 35 are now in condition for allowance and the early issuance of this case is respectfully requested. In the event the Examiner wishes to contact the undersigned regarding any matter, please call (collect if necessary) the telephone number listed below.

Applicants believe there are no fees due for this Rule 111 Amendment. However, if the Examiner deems that fees are due, please charge these fees to Deposit Account No. **18-1982** for sanofi-aventis U.S. LLC, Bridgewater, NJ. Please credit any overpayment to Deposit Account No. **18-1982**.

Respectfully submitted,

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